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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/077,449	02/15/2002	John W. Haim	I-2-165.3US	3952

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VOLPE AND KOENIG, P.C.
DEPT. ICC
UNITED PLAZA, SUITE 1600
30 SOUTH 17TH STREET
PHILADELPHIA, PA 19103

EXAMINER

CONTEE, JOY KIMBERLY

ART UNIT	PAPER NUMBER
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2686

DATE MAILED: 10/08/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/077,449

Applicant(s)

HAIM, JOHN W.

Examiner

Joy K Contee

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 15 February 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1-18 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-16 of copending Application No. 09/904,020. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 1-16 of 09/904,020 encompass the scope of claims 1-18 of the instant application.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Regarding independent claims 1,7,10 and 16 and accordingly the respective dependents 2-6, 8-9,11-15,17-18 of the instant application, they are generally claimed as follows: a user equipment (UE) [and base station] [and the method of using UE] [and the method of using a base station] having closed loop transmission power control for a wireless communication system in which user data is processed as a multirate signal

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having a rate $N(t)$ where $N(t)$ is a function time, in which the user data signal having rate $N(t)$ is converted into a transmission data signal having a faster rate $M(t)$ for transmission and in which the transmission power is adjusted by applying a scale factor in response to step up/down data, comprising: a receiver which receives $M(t)$ rate transmission data signals from a second station and generates the step up/down data for the second station including: a data signal rate converter which decreases the data rate of received transmission data $M(t)$ to produce a user data signal having a lower data rate $N(t)$; a data quality measuring device for measuring the quality of data of the user data signal; circuitry for computing step up/down data based in part on the measured quality of data of the user data signal; and said data signal rate converter associated with said circuitry to provide rate data such that said circuitry computes step up/down data as a function of $N(t)/M(t)$ whereby a change in the user data signal rate $N(t)$ or the rate $M(t)$ of the transmission data signal is compensated for in advance of a quality of data based adjustment associated with such data rate change.

In comparison, independent claims 9 and 1 and accordingly the respective dependents (10-16) and (2-8) of 09/904,020 discloses the same except for "user equipment" in the preamble. Thus claims 1 and 9, respectively disclose the method and apparatus wherein each describes the invention but describes it within a closed loop transmission power control system in the preamble. Since the claimed closed loop transmission power control system processes user data and comprises a receiver, it would have been obvious to one of ordinary skill in the art at the time of the invention to use user equipment or a base station in the closed loop transmission power control

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process.

Omission of element and its function in combination is obvious expedient if remaining elements perform same functions as before. In re KARLSON (CCPA) 136 USPQ 184 (1963).

Conclusion

3. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Chen, U.S. Patent No. 6,607,458, discloses a method and apparatus for pre-transmission power control using lower rate for high rate communication.

Walton, Jr. et al., U.S. Patent No. 5,621,723, discloses a power control in a CDMA network.

English et al., U.S. Patent No. 5,528,593, discloses a method and apparatus for controlling power in a variable rate communication system.

Gilhousen et al., U.S. Patent No. 5,812,938, discloses a reverse link closed loop power control in a CDMA system.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joy K Contee whose telephone number is 703-308-0149. The examiner can normally be reached on 5:30 a.m. to 2:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marsha Banks-Harold can be reached on 703-305-4379. The fax phone numbers for the organization where this application or proceeding is assigned are 703-

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872-9314 for regular communications and 703-872-9314 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-306-0377.


Joy K. Contee
September 30, 2003


CHARLES APPIAH
PRIMARY EXAMINER